

DEPARTMENT OF HUMAN SERVICES
Provider Code of Conduct
POLICY AND RESOURCE MANUAL

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RATIONALE

The purpose of this Provider Code of Conduct is to protect the clients of the Department of Human Services, to establish a consistent standard of conduct for the Providers who serve those clients, and to promote conduct that reflects respect for clients and others. (This policy incorporates the provisions of Rule 495-876.)

I. STATEMENT OF PURPOSE

The Department of Human Services ("DHS") adopts this Code of Conduct to:

- (a)Protect its clients from abuse, neglect, maltreatment and exploitation; and
- (b)Clarify the expectation of conduct for DHS Providers and their employees and volunteers who interact in any way with DHS clients, DHS staff and the public.

The Provider shall distribute a copy of this Code of Conduct to each employee and volunteer, regardless of whether the employees or volunteers provide direct care to clients, indirect care, administrative services or support services. The Provider shall require each employee and volunteer to read the Code of Conduct and sign a copy of the attached "Certificate of Understanding" before having any contact with DHS clients. The Provider shall file a copy of the signed Certificate of Understanding in each employee and volunteer's personnel file. The Provider shall also maintain a written policy that adequately addresses the appropriate treatment of clients and that prohibits the abuse, neglect, maltreatment or exploitation of clients. This policy shall also require the Provider's employees and volunteers to deal with DHS staff and the public with courtesy and professionalism.

This Code of Conduct supplements various statutes, policies and rules that govern the delivery of services to DHS clients. The Providers and the DHS Divisions or Offices may not adopt or enforce policies that are less-stringent than this Code of Conduct unless those policies have first been approved in writing by the Office of Licensing and the Executive Director of the Utah Department of Human Services. Nothing in this Code of Conduct shall be interpreted to mean that clients are not accountable for their own misbehavior or inappropriate behavior, or that Providers are restricted from imposing appropriate sanctions for such behavior.

II. DEFINITIONS

A. General Definitions:

"Client" means anyone who receives services either from DHS or from a Provider pursuant to an agreement with DHS or funding from DHS.

"DHS" means the Utah Department of Human Services or any of its divisions, offices or agencies.

"Domestic-violence-related child abuse" means any domestic violence or a violent physical or verbal interaction between cohabitants in the physical presence of a child or having knowledge that a child is present and may see or hear an act of domestic violence.

"Emotional maltreatment" means conduct that subjects the client to psychologically destructive behavior, and includes conduct such as making demeaning comments, threatening harm, terrorizing the client or engaging in a systematic process of alienating the client.

"Provider" means any individual or business entity that contracts with DHS or with a DHS contractor to provide services to DHS clients. The term "Provider" also includes licensed or certified individuals who provide services to DHS clients under the supervision or direction of a Provider. Where this Code of Conduct states (as in Sections III-VII) that the "Provider" shall comply with certain requirements and not engage in various forms of abuse, neglect, exploitation or maltreatment, the term "Provider" also refers to the Provider's employees, volunteers and subcontractors, and others who act on the Provider's behalf or under the Provider's control or supervision.

"Restraint" means the use of physical force or a mechanical device to restrict an individual's freedom of movement or an individual's normal access to his or her body. "Restraint" also includes the use of a drug that is not standard treatment for the individual and that is used to control the individual's behavior or to restrict the individual's freedom of movement.

"Seclusion" means the involuntary confinement of the individual in a room or an area where the individual is physically prevented from leaving.

"Written agency policy" means written policy established by the Provider. If a written agency policy contains provisions that are more lenient than the provisions of this Code of Conduct, those provisions must be approved in writing by the DHS Executive Director and the Office of Licensing.

B. Definitions of Prohibited Abuse, Neglect, Maltreatment and Exploitation

"Abuse" includes but is not limited to:

1. Harm or threatened harm to the physical or emotional health and welfare of a client.
2. Unlawful confinement.

3. Deprivation of life-sustaining treatment except in accordance with a valid advance directive or other legally-sufficient written directive from a competent client or the client's legal representative (e.g., a parent or legal guardian).
4. Physical injury, such as a contusion of the skin, laceration, malnutrition, burn, fracture of any bone, subdural hematoma, injury to any internal organ, any injury causing bleeding, or any physical condition which imperils a client's health or welfare.
5. Any type of unlawful hitting or corporal punishment.
6. Domestic-violence-related child abuse.
7. Any sexual abuse or sexual exploitation, including but not limited to:
 - a. Engaging in sexual intercourse with any client.
 - b. Touching the anus or any part of the genitals or otherwise taking indecent liberties with a client, or causing an individual to take indecent liberties with a client, with the intent to arouse or gratify the sexual desire of any person.
 - c. Employing, using, persuading, inducing, enticing, or coercing a client to pose in the nude.
 - d. Engaging a client as an observer or participant in sexual acts.
 - e. Employing, using, persuading, inducing, enticing or coercing a client to engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct. This includes displaying, distributing, possessing for the purpose of distribution, or selling material depicting nudity, or engaging in sexual or simulated sexual conduct with a client.
 - f. Committing or attempting to commit acts of sodomy or molestation with a client.

As used in this Code of Conduct, the terms Asexual abuse, and Asexual exploitation, do not refer to approved therapeutic processes used in the treatment of sexual deviancy or dysfunction as long as those therapeutic processes have been outlined in the client's treatment plan and are consistent with generally-accepted therapeutic practices and written agency policy.

"Neglect" includes but is not limited to:

1. Denial of sufficient nutrition.
2. Denial of sufficient sleep.
3. Denial of sufficient clothing, or bedding.

4. Failure to provide adequate client supervision, including situations where the Provider's employee or volunteer is asleep or ill on the job, or is impaired due to the use of alcohol or drugs.

5. Failure to provide care and treatment as prescribed by the client's service, program or treatment plan, including failure to arrange for medical or dental care or treatment as prescribed or as instructed by the client's physician or dentist, unless the client or the Provider obtains a second opinion from another physician or dentist, indicating that the originally-prescribed medical or dental care or treatment is unnecessary.

6. Denial of sufficient shelter, where shelter is part of the services the Provider is responsible for providing to the client.

7. Educational neglect (i.e., willful failure or refusal to make a good faith effort to ensure that a child in the Provider's care or custody receives an appropriate education).

"Exploitation" includes but is not limited to:

1. Using a client's property without the client's consent or using a client's property in a way that is contrary to the client's best interests, such as expending a client's funds for the benefit of another.

2. Making unjust or improper use of clients or their resources.

3. Accepting a gift in exchange for preferential treatment of a client or in exchange for services that the Provider is already obliged to provide to the client.

4. Using the labor of a client for personal gain.

5. Using the labor of a client without paying the client a fair wage or without providing the client with just or equivalent non-monetary compensation, except where such use is consistent with standard therapeutic practices and is authorized by DHS policy or the Provider's contract with DHS.

Examples:

(a) It is not "exploitation" for a foster parent to assign an extra chore to a foster child who has broken a household rule, because the extra chore is reasonable discipline and teaches the child to obey the household rules.

(b) It is not "exploitation" to require clients to help serve a meal at a senior center where they receive free meals and are encouraged to socialize with other clients. The meal is a non-monetary compensation, and the interaction with other clients may serve the clients' therapeutic needs.

(c) It is usually "exploitation" to require a client to provide extensive janitorial or household services without pay, unless the services are actually an integral part of the therapeutic program, such as in "clubhouse" type programs that have been approved by DHS.

"Maltreatment" includes but is not limited to:

1. Physical exercises, such as running laps or performing pushups, except where such exercises are consistent with an individual's service plan and written agency policy and with the individual's health and abilities.
2. Any form of Restraint or Seclusion used by the Provider for reasons of convenience or to coerce, discipline or retaliate against a client. The Provider may use a Restraint or Seclusion only in emergency situations where such use is necessary to ensure the safety of the client or others and where less restrictive interventions would be ineffective, and only if the use is authorized by the client's service plan and administered by trained authorized personnel. Any use of Restraint or Seclusion must end immediately once the emergency safety situation is resolved. The Provider shall comply with all applicable laws about Restraints or Seclusion, including all federal and state statutes, regulations, rules and policies.
3. Assignment of unduly physically strenuous or harsh work or exercise.
4. Requiring or forcing the client to take an uncomfortable position, such as squatting or bending, or requiring or forcing the client to repeat physical movements as a means of punishment.
5. Group punishments for misbehavior of individuals.
6. Emotional maltreatment, bullying, teasing, provoking or otherwise verbally or physically intimidating or agitating a client.
7. Denial of any essential program service solely for disciplinary purposes.
8. Denial of visiting or communication privileges with family or significant others solely for disciplinary purposes.
9. Requiring the individual to remain silent for long periods of time for the purpose of punishment.
10. Extensive withholding of emotional response or stimulation.
11. Denying a current client from entering the client's residence, where such denial is for disciplinary or retaliatory purposes or for any purpose unrelated to the safety of clients or others.

III. ABUSE, NEGLECT, EXPLOITATION AND MALTREATMENT ARE PROHIBITED

Providers shall not abuse, neglect, exploit or maltreat clients in any way, whether through acts or omissions or by encouraging others to act or by failing to deter others from acting.

IV. PROVIDER'S COMPLIANCE WITH CONDUCT REQUIREMENTS IMPOSED BY LAW, CONTRACT OR OTHER POLICIES

In addition to complying with this Code of Conduct, the Provider shall comply with all applicable laws (such as statutes, rules and court decisions) and all policies adopted by the DHS Office of Licensing, by the DHS Divisions or Offices whose clients the Provider serves, and by other state and federal agencies that regulate or oversee the Provider's programs. Where the Office of Licensing or another DHS entity has adopted a policy that is more specific or restrictive than this Code of Conduct, that policy shall control. If a statute, rule or policy defines abuse, neglect, exploitation or maltreatment as including conduct that is not expressly included in this Code of Conduct, such conduct shall also constitute a violation of this Code of Conduct. See, e.g., Title 62A, Chapter 3 of the Utah Code (definition of adult abuse) and Title 78, Chapter 3a and Title 76, Chapter 5 of the Utah Code (definitions of child abuse).

V. THE PROVIDER'S INTERACTIONS WITH DHS PERSONNEL AND THE PUBLIC

In carrying out all DHS-related business, the Provider shall conduct itself with professionalism and shall treat DHS personnel, the members of the Provider's staff and members of the public courteously and fairly. The Provider shall not engage in criminal conduct or in any fraud or other financial misconduct.

VI. SANCTIONS FOR NON-COMPLIANCE

If a Provider or its employee or volunteer fail to comply with this Code of Conduct, DHS may impose appropriate sanctions (such as corrective action, probation, suspension, disbarment from State contracts, and termination of the Provider's license or certification) and may avail itself of all legal and equitable remedies (such as money damages and termination of the Provider's contract).

In imposing such sanctions and remedies, DHS shall comply with the Utah Administrative Procedures Act and applicable DHS rules. In appropriate circumstances, DHS shall also report the Provider's misconduct to law enforcement and to the Provider's clients and their families or legal representatives (e.g., a legal guardian). In all cases, DHS shall also report the Provider's misconduct to the licensing authorities, including the DHS Office of Licensing.

VII. PROVIDERS' DUTY TO HELP DHS PROTECT CLIENTS

1. Duty to Protect Clients' Health and Safety. If the Provider becomes aware that a client has been subjected to any abuse, neglect, exploitation or maltreatment, the Provider's first duty is to protect the client's health and safety.

2. Duty to Report Problems and Cooperate with Investigations. Providers shall document and report any abuse, neglect, exploitation or maltreatment and exploitation as outlined in this Code of Conduct, and they shall cooperate fully in any investigation conducted by DHS, law enforcement or other regulatory or monitoring agencies.

a. Except as provided in Section (B)(1)(a) and (B)(3) below, Providers shall immediately report abuse, neglect, exploitation or maltreatment by contacting the local Regional Office of the appropriate DHS Division or Office. During weekends and on holidays, Providers shall make such reports to the on-call worker of that Regional Office.

(i) Providers shall report any abuse or neglect of disabled or elder adults to the Adult Protective Services intake office of the Division of Aging and Adult Services.

b. The Provider shall make all reports and documentation about abuse, neglect, exploitation, and maltreatment available to appropriate DHS personnel and law enforcement upon request.

c. Providers shall document any client injury (explained or unexplained) that occurs on the Providers' premises or while the client is under the Provider's care and supervision, and the Provider shall report any such injury to supervisory personnel immediately. Providers shall cooperate fully in any investigation conducted by DHS, law enforcement or other regulatory or monitoring agencies. If the client's injury is extremely minimal, the Provider has 12 hours to report the injury. The term "extremely minimal" refers to injuries that obviously do not require medical attention (beyond washing a minor wound and applying a band-aid, for example) and which cannot reasonably be expected to benefit from advice or consultation from the supervisory personnel or medical practitioners.

(i) Example: If a foster child falls off a swing and skins her knee slightly, the foster parent shall document the injury and report to the foster care worker within 12 hours.

(ii) Example: If a foster child falls off a swing and sprains or twists her ankle, the foster parent shall document the injury and report it immediately to supervisory personnel because the supervisor may want the child's ankle X-rayed or examined by a physician.

3. Duty to Report Fatalities and Cooperate in Investigations and Fatality Reviews. If a DHS client dies while receiving services from the Provider, the Provider shall notify the supervising DHS Division or Office immediately and shall cooperate with any investigation into the client's death. In addition, some Providers are subject to the Department of Human Services' Fatality Review Policy. (See the "Eligibility" section of DHS Policy No. 05-02 for a description of the entities subject to the fatal-review requirements. A copy of the policy is available at the DHS web site at: <http://www.dhs.state.ut.us/policy.htm>) If the Provider is subject to the Fatality Review Policy, it shall comply with that policy (including all reporting requirements) and the Provider shall cooperate fully with any fatality reviews and investigations concerning a client death.

4. Duty to Display DHS Poster. The Provider shall prominently display in each facility a DHS poster that notifies employees of their responsibilities to report violations of this Provider Code of Conduct, and that gives phone numbers for the Regional Office or Intake Office of the relevant DHS Division(s). Notwithstanding the foregoing, if the Provider provides its services in a private home and if the Provider has fewer than three employees or volunteers, the Provider shall maintain this information in a readily-accessible place but it need not actually display the DHS poster. DHS shall annually provide the Provider with a copy of the current DHS poster or it shall make the poster available on the DHS web site: <http://www.dhs.state.ut.us>.

Robin Arnold-Williams, Deputy Executive Director
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